

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1215 of 1981
With
FIRST APPEAL No. 1216 of 1981
With
CROSS OBJECTION No. 110 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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GUJARAT STATE ROAD TRANSPORT CORPORATION. - Appellant(s)
Versus
LILAVATIBEN BABULAL & 5 - Defendant(s)

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Appearance :

Ms MAYA DESAI for Appellant(s) : 1,
MS. VAISHALI VITHLANI WITH MR YOGESH S LAKHANI for Defendant(s) : 1
to 2/1, 3 and 6

MR ND BUCH, for Respondents No. 1 to 4 in connected First Appeal No.
1216 of 1981

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/08/2007

COMMON ORAL JUDGMENT

1. Ms. Maya Desai, learned counsel for the appellant; Ms. Vaishali Vithlani with Shri Y.S. Lakhani, learned counsel for the respondents no. 1 to 2/1, 3 and 6; Shri N.D. Buch, learned counsel for the respondents no. 1 to 4 in connected First Appeal No. 1216 of 1981.
2. In an unfortunate incident, two persons, namely, Babulal Veljibhai and Kanji Jiva, who were inmates of Ambassador Car bearing registration No. GJF 325, lost their lives, therefore, successors/dependents of the said two deceased have filed different Claim Petitions. Motor Accident Claims Petition No. 116 of 1978 came to be filed by the dependents of Babulal Veljibhai and Motor Accident Claims Petition No. 117 of 1978 came to be filed by the dependents of Kanji Jiva. Motor Accidents Claims Tribunal, Surendranagar, vide its judgment and award dated 31st January, 1981 held that successors/dependents of Babulal Veljibhai were entitled to recover a sum of Rs. 3,60,000/- but the liability of the driver of the bus no. GRS

7490 was to the extent of 75% only, such dependents would be entitled to recover a sum of Rs. 2,73,750/- from the driver and owner of the said bus. The Tribunal also awarded a sum of Rs. 37,500/- in favour of the dependents of Kanji Jiva after deducting a sum of 25% from the sum awardable to the said claimants holding that the deceased was negligent to the extent of 25%. Being aggrieved by the said judgment and award, the Gujarat State Road Transport Corporation has filed First Appeals No. 1215 of 1981 and 1216 of 1981. The dependents of Babulal Veljibhai have filed Cross Objections No. 110 of 2007, submitting inter alia, that the sum awarded in favour of the said dependents was on the lower side.

3. The short facts necessary for disposal of the present appeals and the Cross Objections are that on 7th May, 1978, probably in the morning, two trucks bearing registration No. GTA 1180 and GTB 4828 met with an accident, each of the truck was lying on the left side of the road, the position is clear from exh. 45, the panchnama

prepared by the Police after the accident. It appears that thereafter at about 8.30 a.m., Kanji accompanied by Babulal were travelling in Ambassador Car No. GJF 325, they were going from Ahmedabad to Rajkot. At that point of time, the car dashed with GSRTC bus no. GRS 7490. The accident was with such impact that the front portion of the car tilted and met with the back portion, steering wheel of the car was thrown away, front portion of the car otherwise was also badly damaged, driver Kanji was crushed to death on the spot and Babulal thereafter died in the hospital. On the allegation that the driver of the bus was absolutely rash and negligent and did not use proper care and caution even after seeing an on coming car, the claim petition was filed. Driver and the owner of the bus submitted their defence stating, inter alia, that the total negligence was on the part of the car driver, even after seeing the on coming bus, he did not stop but proceeded further with exorbitant speed, as a result of which, the car dashed against the bus which had overtaken one

of the truck and was proceeding towards Ahmedabad.

4. Ms. Desai, learned counsel for the appellant, after referring to the panchnama, exh. 45, which was in relation to the trucks and yet another panchnama exh. 32 which was in relation to the accident between the bus and the car, submitted that from each of the panchnama, it would not appear that what was the real position of the accident. According to her, from the statements of the witnesses, specially, conductor of the bus, it would clearly appear that the bus driver was driving the bus at a moderate speed and the car driver was driving the car very rashly and negligently. She also submitted that in absence of the proper details about the spot, the Tribunal was unjustified in holding the bus in question and its driver to the extent of 75%. After taking me through the evidence and the findings recorded by the learned Tribunal, Ms. Desai further submitted that the Tribunal erred in holding that the claimants were entitled to a sum of Rs. 3,60,000/-. According to her, the

award suffers with the vice of excessiveness. Learned counsel for the respondent Lilavatiben Babulal, however, submitted that from the panchnamas and other evidence, it would clearly appear that the bus was driven with such ferocious speed that after the accident, not only it stopped the car but dragged the car to the distance of eight to ten feet in the opposite direction. She also submitted that from the evidence available on the records, it would clearly appear that the income of the deceased was more than Rs.1.00 lac per year and he was providing help and assistance to the family to the extent of Rs.5,000/-. Learned counsel for the respondent submitted that present is a case where amount of compensation deserves to be enhanced.

5. In relation to the claim made in favour of the dependents of Kanji, Ms. Desai, learned counsel for the appellant GSRTC submitted that the Tribunal did not apply realistic approach to the facts of the case and erred in holding that the claimants were entitled to Rs.50,000/- and the

present appellant was answerable to the claim to the extent of Rs. 37,500/-.

6. From the panchnama exh. 45, it would clearly appear that the two trucks had met with an accident and each truck was lying on its left side. What was the cause of the accident could be best explained by the driver of either of the vehicles, that is, driver of the bus or driver of the car. Unfortunately, the driver of the car has expired and unfortunately for the appellant, driver of the bus, for no good reasons, did not step in the witness box. GSRTC in its wisdom has simply examined the conductor of the offending bus. Conductor of the bus simply suggested that the bus was being driven at a moderate speed, it was trying to overtake a stationery truck from its left and the driver was not at all negligent. In the opinion of this Court, the Tribunal was not unjustified in rejecting the testimony of the conductor on the ground that it was impossible for the bus driver to overtake a stationery truck from the left side of that truck, because, distance of more

than eight feet was not clearly available to the bus driver for purposes of overtaking. The Tribunal has found that after overtaking the first truck, driver of the bus could not bring the bus to its left side and at that point of time, it had hit the car. The findings on the basis of the evidence available on the records cannot be said to be perverse. The findings are based on proper appreciation of the evidence. The Tribunal, while holding the driver of the bus guilty of the negligence has also held that the driver of the car was also negligent to the extent of 25%, because, he did not stop his vehicle on the side road after seeing on coming bus though he was on the correct side of the road. The finding recorded by the Tribunal cannot be said to be perverse. Being in general agreement with the findings recorded by the Tribunal, I hold that the driver of the bus was negligent to the extent of 75%.

7. The evidence available on the records clearly prove that the gross income of the deceased was around Rs. 1.00 lac per year. The widow has

submitted before the Court that her husband was paying her a sum of Rs. 5,000/- per month to meet the expenses. The Tribunal has given cogent reasons to hold that the dependency could at best be Rs. 2500/- per month or Rs. 30,000/- per year. Looking to the age of the deceased, one cannot say that multiplier of 12 could not be applied. The Tribunal was absolutely justified in holding that in case like present, where some minors had survived the deceased, application of multiplier of 12 would be bad. The Tribunal has correctly observed that the total dependency could be Rs. 3,60,000/- for the purposes of loss of future income and, did not err in deducting 25% from the total amount.

8. So far as the award made in favour of the dependents of the deceased Kanji is concerned, the Tribunal has observed that the deceased Kanji was about 25 years of age and he was working as driver of one Babulal, his monthly income was Rs.300/-. This fact is supported by the statement of the widow of the owner of the car. Out of the said amount, if the Tribunal has

found that the dependency could be to the extent of Rs.250/-, then, no wrong with the said finding can be found. The Tribunal also did not err in applying the multiplier of 15. After holding that the dependents of Kanji would be entitled to a sum of Rs. 50,000/-, the Tribunal was justified in recording a finding that the deceased was negligent to the extent of 25%. The Tribunal was justified in awarding Rs. 37,500/-.

9. For the reasons stated aforesaid, I find no reason to entertain the appeals or the Cross Objections.

10. Both the appeals and the Cross Objections are dismissed, but, however, there shall be no costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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